IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12551 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HUSAIN Y GHANCHIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12551 of 1993

MR MA KHARADI for Petitioner No. 1-2

Mr. LR Poojari, AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioners, by way of this Special Civil Application under Article 227 of the Constitution of India had challenged the order passed by the learned Special Secretary (Appeals) dated 6.9.1993 in dismissing the Revision Application No. SRD 8/1992 confirming the order passed by the Collector, Panchmahals dated

29.1.1992 in Revision Application No. 185 of 1990 and also the order passed by the Deputy Collector, Godhra dated 23.7.1990 in RTS Revision Case No. 1/1988 by which Entries No. 15562 and 15563 in favour of the petitioners have been cancelled.

2. It is the case of the petitioners that one Mariambibi, daughter of Yusuf Haji Ismail Kalandar was owner of agricultural land bearing Survey No. 1246/B, 1247/B, 1248/B, 1252/B situate at Godhra. That the said Mariambibi executed a power of attorney on 2.1.1964 in favour of her father, Haji Ismail for administration of the said agricultural land. That the holder of said power of attorney had executed registered Sale Deed in favour of the petitioners in the year 1987 and the petitioners purchased the land in question. That thereafter necessary entries were made in the Record of Rights by way of mutation entries No. 15562 and 15563. That the said entries also came to be certified on 29.12.1987.

3. That on the basis of the letter written by respondent No.4, the respondent No.3 has taken the aforesaid entries No. 15562 and 15563 in suo motu review exercising the power under Rule 108 of the Bombay Land Revenue Rules on the ground that the original owner, i.e., Mariambibi had left for Pakistan in the year 1970 and the properties in question have been declared as enemy properties under the provisions of Enemy Property Act, 1968 (hereinafter referred to as "the Act") and the transaction was in breach of the provisions of the Act and the notification dated 10th September 1965 issued under the provisions of the Defence of India Rules. That the Dy. Collector, by his judgment and order dated 23rd July 1990 set aside the aforesaid entries by holding that the transaction in question is hit by the provisions of the Act and in contravention of the notification No. 12-2-65 dated 10th September 1965 under the provisions of the Defence of India Rules, 1962.

4. That being aggrieved and dissatisfied with the order passed by the Dy. Collector, Godhra dated 23rd July 1980 in cancelling the aforesaid entries, the petitioner preferred revision application before the Collector, Panchmahals, which was numbered as RTS Revision Application No. 185/1990, and the Collector, Godhra, also by his judgment and order dated 29th January 1992 dismissed the said appeal confirming the order passed by the Dy. Collector, Godhra. That being aggrieved and dissatisfied with the order passed by the Collector, the petitioner preferred Revision Application

No. SRD 8/92 before the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, and the learned Special Secretary (Appeals) by his order dated 6.9.1993 had dismissed the said revision application confirming the order passed by both the authorities below. Being aggrieved and dissatisfied with the aforesaid orders in cancelling the entries No. 15562 and 15563, the petitioners had preferred Special Civil Application under Article 227 of the Constitution of India.

5. Shri Kharadi, ld. advocate appearing on behalf of the petitioners had assailed the orders passed by the authorities below on the ground that while exercising the powers under Rule 108(6) in RTS proceedings, the authorities had no jurisdiction to cancel the entries on the ground that there is breach of provision of any other law. For that, the ld. advocate appearing for the petitioner has relied upon a judgment of this Court in the case of Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991 (1) G.L.R. Page 113, in which it is specifically held in Para 12 that the revenue authorities, as mentioned in Rule 108 of the Rules cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the Entry are against the provisions of a particular enactment. It is also held in the said judgment that the question whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. The ld. advocate appearing for the petitioner has also relied upon a judgment of this Court in the case of Siddharth B. Shah and others vs. State of Gujarat, reported in 1999 (3) GLR Page 2527 with regard to proposition that entries made in the revenue records have primarily a fiscal value and they do not create title and revenue authorities cannot pass orders on an assumption under Rule 108 that a transaction recorded in the entries are against provisions. Accordingly, Shri Kharadi has submitted that the judgment and order passed by all the authorities below by which the entries are cancelled are required to be quashed and set aside.

6. Shri LR Poojari, ld. AGP appearing on behalf of the State Government has supported all the orders passed by the authorities below. He contended that in view of the fact that the transaction in question is hit by the provisions of the said Act and in contravention of the

provisions of the Defence of India Rules, the authorities were justified in cancelling the entries and therefore requested to dismiss the Special Civil Application.

7. I have heard the ld. advocates appearing on behalf of the parties and I have also gone through the orders passed by the authorities below. While cancelling the entries in exercise of powers in RTS proceedings the Dy. Collector and other authorities had held that there is a breach of provisions of the said Act and therefore the transaction in question was hit by the aforesaid provisions. As held by this Court in the aforesaid 2 judgments, while exercising the powers in RTS proceedings the revenue authorities cannot cancel the entries on an assumption that transactions recorded in the entry are against the provisions of a particular enactment. It is well settled that the entries made in the Revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the document of title or the orders passed by the competent authorities under special enactment. Under the circumstances, when on the basis of the registered sale deed the entries were made it was not open for the Dy. Collector to set aside the entries on the ground that the transactions recorded in the entries are against the provisions of the Enemy Properties Act.

8. In view of the aforesaid facts, the exercise of powers by Dy. Collector, Godhra and confirmed by the Collector and the learned Special Secretary are without any jurisdiction and the Deputy Collector has exceeded his jurisdiction to cancel the entries on the ground that the transaction is hit by the provisions of the Enemy Properties Act. In view of the aforesaid discussion, the present Special Civil Application is required to be allowed and the orders passed by all the authorities below are quashed and set aside, restoring the aforesaid entries No. 15562 and 15563 in the Record of Rights.

9. It is made clear, that this Court, while allowing the Special Civil Application, has not considered the validity of the transaction in question and the authorities are not precluded from taking appropriate action in accordance with law with regard to breach of Enemy Properties Act and/or the Notification dt. 10.9.1965 issued under the provisions of Defence of India Rules, and it will be open for them to take appropriate action in accordance with law.

rmr. [M.R. Shah, J.]